



STATE BOARD OF EQUALIZATION

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May 11, 1989

Dear Mr.

Senator Cecil Green has requested that this office respond to your request for advice regarding the application of Assembly Bill 47 (chapter 48 of the Statutes of 1987). This legislation added section 63.1 to the Revenue and Taxation Code. This provision excludes from change in ownership certain transfers of real property between parents and their children. Its provisions apply to transfers completed on or after November 6, 1986. As we understand it, your question relates to whether certain property, which was placed in trust, transferred before or after the November 6 date.

Unfortunately, your letter did not include a copy of the trust or other documents related to the transaction which was the subject of your letter. Instead, you refer to a so-called "standard, living trust" which is described as a trust created by the sole owner of a residence which specified that one child shall be the first beneficiary. The trust also named the child as the successor trustee with the assigned duty to transfer the property to the beneficiary upon the original trustor's death. The trustor also executed a quit claim deed transferring the ownership of the property to himself as trustee and to his successor trustee under the terms of the trust. The original trustor died prior to the November 6 date but the successor trustee did not execute a quit claim deed to terminate the trust and transfer the property to himself as beneficiary until after the November 6 date. Apparently, you believe that the date of the quit claim deed terminating the trust should be viewed as the date of change of ownership for purposes of section 63.1.

Since we do not have copies of the actual trust and related documents, we do not have sufficient information to provide a detailed response. If you would like to submit that information to us, we would be happy to review it and give you our opinion. While such an opinion would be advisory in nature, and would not be binding upon your county assessor, you

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would, undoubtedly, find it helpful in understanding the application of the law to your situation.

In general, I would point out that the basic definition of change in ownership found in Revenue and Taxation Code section 60 refers to a transfer of a present interest in real property including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. The provisions applicable to trust transactions are found Revenue and Taxation Code sections 61(g) and 62(d). See also Property Tax Rule 462(i) (18 California Code of Regulations section 462(i)). Applying the general concepts of change in ownership found in section 60, these provisions recognize that a change in ownership of property placed in trust occurs when the beneficial ownership of the property transfers from the trustor to the beneficiary. A transfer of title to a trustee merely transfers bare legal title, not beneficial ownership, and for that reason is not considered controlling for purposes of change in ownership. In the typical living trust, the parents usually transfer the property to themselves as the trustees subject to the terms of the trust. Under the trust, the parents reserve a life estate in the property and designate the child as the beneficiary. Since the parents reserve the life estate in the property, the child's interest does not become a present interest until the parents die. On the last parent's death, the child becomes the present beneficial owner of the property and a change in ownership is deemed to occur at that time. The child's beneficial ownership of the property occurs as a result of the parent's death and not as the result of some subsequent deed transferring the legal title to the beneficiary. Thus, delays in transferring the legal title do not affect the date of change in ownership for property tax purposes.

We hope that the foregoing information will be helpful to you. If you would like us to consider your question in more detail, please submit copies of the trust and related documents together with a complete factual description of the transaction. It would also be helpful if you would include your telephone number so that we may contact you directly if we have any questions.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:cb

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